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Agenda Date: 9/13/06

Agenda Item: 5 B



**STATE OF NEW JERSEY**

**Board of Public Utilities**

**Two Gateway Center**

**Newark, NJ 07102**

**[www.bpu.state.nj.us](http://www.bpu.state.nj.us)**

IN THE MATTER OF THE APPLICATION OF	)	<u>WATER</u>
MIDDLESEX WATER COMPANY FOR	)	
AUTHORITY TO ISSUE AND SELL UP TO	)	ORDER AUTHORIZING THE ISSUANCE
1,500,000 SHARES OF COMMON STOCK	)	AND SALE OF COMMON STOCK
	)	
	)	DOCKET NO. WF06060499

(SERVICE LIST ATTACHED)

BY THE BOARD:

Middlesex Water Company ("Petitioner"), a public utility of the State of New Jersey, by Petition filed July 10, 2006, with the Board of Public Utilities ("Board"), requested authority pursuant to N.J.S.A. 48:3-9 and N.J.A.C. 14:1-5.9, to issue and sell up to 1,500,000 shares of Common Stock without par value.

The net proceeds from the sale of the Common Stock will be used by Petitioner to provide additional financing for the Company's capital program, to pay short-term debt, and to maintain an appropriate balance in the capital structure of the Company, including its regulated affiliates.

Petitioner proposes to issue and sell the Common Stock by a negotiated public offering through the underwriting firm of Janney Montgomery Scott, LLC ("Underwriter"). Petitioner proposes to enter into an Underwriting Agreement with the Underwriter. The Underwriter Agreement contains a provision which will allow the underwriter to add, eliminate or substitute other Underwriters as needed in order to sell Petitioner's Common Stock.

The price to be paid to Petitioner and the offering price for the shares of Common Stock have not yet been determined. Said price will be determined by agreement between Petitioner and the Underwriter as a result of negotiations and will be based on the market price of the Common Stock, as described below, on the pricing date to be selected by Petitioner and the Underwriter.

Petitioner and the Underwriter have made certain agreements concerning the date proposed for the sale and the number and price of shares to be sold. The proposed sale is currently scheduled to take place in the fourth quarter of 2006. However, Petitioner requests authority to make the sale at a later date, if necessary, to account for market conditions and/or possible Securities and Exchange Commission review. Subject to satisfaction of the terms and conditions of the Underwriting Agreement, including the agreement of the parties to

consummate the sale, Petitioner will issue and sell up to 1,500,000 shares of Common Stock. The Underwriter will purchase said shares from the Petitioner at a price per share which will be mutually agreed upon utilizing the closing bid price quoted on the last trading day prior to the sale ("Pricing Date") less a 3.80% Underwriter's spread.

The Division of the Ratepayer Advocate has reviewed the Application and is not opposed to its approval. Approval of the Application to issue and sell, on a negotiated basis up to 1,500,000 shares of Common Stock without par value should not include authorization to include in rate base the specific assets that will be acquired as a result of this application.

Upon review of the proposed method of sale of the Common Stock by the Petitioner, the Board HEREBY DETERMINES that a negotiated public offering is appropriate.

The Board, after investigation in this matter and review of the petition and exhibits submitted in this proceeding, FINDS that the proposed transaction is to be made in accordance with the law, is in the public interest and approving the purposes thereof, HEREBY ORDERS that Petitioner be and is HEREBY AUTHORIZED to issue and sell, on a negotiated basis, up to 1,500,000 shares of Common Stock without par value, to Janney Montgomery Scott, LLC and/or to such other underwriters as may be authorized under the Underwriting Agreement at a mutually agreed upon price which will be based on the closing bid price on the Pricing Date less 3.80% Underwriter's spread, without further Board Order all as herein described.

The Order is issued subject to the following provisions:

- 1 This Order shall not include authorization to include in rate base the specific assets that will be acquired as a result of this approval.
2. Petitioner shall submit a copy of the journal entries to record the issuance and sale of the Common Stock and expensed related thereto in accordance with the appropriate Uniform System of Accounts.
3. In the event that Petitioner finds it appropriate to effect the issuance and sale of the Common Stock in a manner other than as described in this Order, Petitioner shall file with the Board as promptly as practicable, a statement advising the Board of such facts, stating the reasons therefore, proposing an alternative course of action and requesting a Supplemental Order specifically authorizing the actions then proposed to be taken.
4. Petitioner shall, as soon as practicable after the issuance and sale of the Common Stock, submit to this Board a statement, which shall indicate the date of sale, the closing bid price on the Pricing Date, the price paid to the Petitioner, the Underwriter's spread and the net proceeds to the Petitioner.
5. Petitioner shall submit to the Board copies of the executed Underwriting Agreement substantially in the form originally submitted to the Board under this filing and all other agreements as executed and filed with other regulatory agencies.
6. The Board's approval is expressly limited to the sale of common stock without par value described herein and as more fully described in the Application and supporting documents.

- 7 This Order shall not be construed as directly or indirectly fixing, for any purposes whatsoever, any value of the tangible or intangible assets now owned or hereafter to be owned by the Petitioner.
8. This Order shall not be construed as a certification that the Common Stock authorized to be issued and sold will be represented by tangible or intangible assets of commensurate value or investment costs.
9. This Order shall not affect nor in any way limit exercise of the authority of this Board, or of this State, in any future petition or in any proceedings with respect to rates, franchises, services, financing, (including the method of sale of securities), accounting, capitalization, depreciation or in any other matter affecting the Petitioner.
10. Petitioner shall file with the Board a statement setting forth the extent to, and in detail, the manner in which the proceeds have been distributed.


11. The authority granted in this Order shall become null and void and of no effect with respect to any portion thereon which is not exercised by March 31, 2007.


DATED:

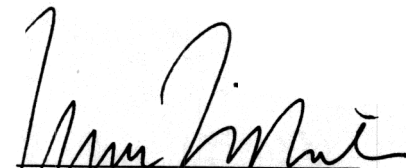
9/14/06


BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
CONNIE O. HUGHES  
COMMISSIONER

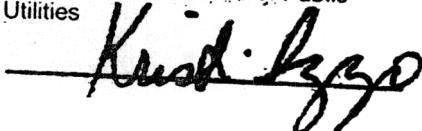
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
CHRISTINE V. BATOR  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities



## SERVICE LIST

### In the Matter of the Application of Middlesex Water Company for Authority to Issue and Sell Up to 1,500,000 Shares of Common Stock

Docket No. WF06060499

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**BOARD OF PUBLIC UTILITIES  
OFFICE OF THE ECONOMIST**

**FINANCING FACT SHEET  
DOCKET NO. WF06060499**

**PETITIONER:** Middlesex Water Company

**TYPE OF SECURITY:** Issuance and Sale of up to 1,500,000 shares of common stock

**AMOUNT:** 1,500,000 shares @ \$18.98 (July 6, 2006)  
\$28,470,000 gross proceeds  
\$27,213,140 net proceeds

**METHOD OF SALE:** Public offering, registered with the SEC

**UNDERWRITER:** Janney Montgomery Scott LLC

**USE OF PROCEEDS:** The Company intends to pay off its projected Note Payable balance of \$15.5 million. The remaining proceeds of \$11.7 million will be used to partially fund the 2007 capital program for Middlesex of \$18.6 million and the 2007 capital program for its Delaware regulated subsidiaries of \$49.9 million.

**NJ PRESENCE:** Petitioner collects, treats, and distributes water for service on a retail basis to approximately 58,500 customers in South Plainfield, Metuchen, Carteret, Woodbridge, Edison South Amboy and portions of Clark and, on a contract basis, for sale or for treatment and pumping to several municipalities in Middlesex and Monmouth Counties. Annual NJ Revenue – \$51,226,686 (12/31/2005)

**PETITIONER'S TEAM**

**COUNSEL:** Kenneth J. Quinn, Esq

**TECHNICAL CONTACT:** A. Bruce O'Connor

**BPU STAFF**

**ECONOMIST OFFICE:** Michael Tavani, Robert Wojciak

**D A G:** Carla Bello?

**AGENDA DATE:** 9/13/06

**PREPARED BY:** Michael Tavani  
**REVIEWED BY:** Mark C. Beyer